

Nomination of John Roberts to the Supreme Court
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On July 19, President Bush nominated Judge John Roberts to serve as an Associate Justice on the U.S. Supreme Court. By all accounts, Judge Roberts has excellent legal credentials: he graduated magna cum laude from Harvard Law School, he clerked for then-Associate Justice Rehnquist, he served as Principal Deputy Solicitor General at the Department of Justice, he amassed a strong record as a Supreme Court advocate in private practice, and he has distinguished himself as a judge on the D.C. Circuit Court of Appeals. His record reveals a lawyer at the top of his profession.

I was particularly struck by Judge Roberts' statement the evening he was nominated at the White House that he had a "profound appreciation for the role of the Court in our constitutional democracy." The role of the Court in American government and life is of great concern to me as well.

It is my hope that Judge Roberts – indeed, any nominee to the Supreme Court – would be faithful to the role originally intended for the courts by the Framers of the Constitution.

In my view, democracy loses its luster when Justices on the high Court – who are unelected and, effectively, unaccountable – invent constitutional rights and alter the balance of governmental powers in ways that find no support in the text, structure, or history of the Constitution. Unfortunately, the Court in recent years has aggressively, and in my view improperly, assumed a more prominent political role.

In our system of government, the Constitution contemplates that federal courts will exercise limited jurisdiction: they should neither write nor execute the laws, but simply "say what the law is," as former Chief Justice Marshall stated in the famous 1803 case of *Marbury v. Madison*.

As Alexander Hamilton explained, this limitation on judicial power is what would make the federal judiciary the "least dangerous branch." He assured his fellow Framers that judges could be trusted with power because they would not resolve divisive social issues, short-circuit the political process, or invent rights that had no basis in the text of the Constitution.

Unfortunately, the courts in recent years have strayed far beyond the limited role envisioned by the Constitution. The Framers surely would be shocked at the broad sweep of judicial power in America today: federal courts today are redefining the meaning of marriage, deciding when life begins and when it may end, running prisons and schools by decree, enhancing federal power at the expense of the states, and interpreting the American Constitution on the basis of foreign and international law.

In many cases, the courts have allowed politically-motivated litigators to achieve through constitutional mandates what they cannot persuade the People to enact through the legislative process.

The expanded role assumed by the Supreme Court and federal courts generally in recent years makes it all the more important that Judge Roberts exhibit proper respect for the restrained role of the federal courts in American government. I hope the confirmation process demonstrates that he will live up to the President's stated ideal of nominating individuals who will refrain from making law on the bench.

I also hope that my colleagues will resist the demands from liberal interest groups urging knee-jerk opposition to Judge Roberts' nomination. Senators should live up to the tradition of careful, considered debate which is the heritage of our great institution. Our deliberation on this nomination should be respectful, and it should focus on substance.

It would be a tragedy for the Senate and for the Republic if the confirmation process for Judge Roberts reflects the treatment some of President Bush's nominees to this point, including Roberts himself when he was a circuit court nominee, have received. Judge Roberts' pleasant demeanor should be matched by civil treatment in the Judiciary Committee and on the Senate floor.

Finally, neither filibusters nor supermajority requirements have any place in the confirmation process. Those tactics of obstruction should become the historical relics they deserve to be. The country deserves, and the Constitution demands, a prompt, thorough debate and a fair up-or-down vote on Judge Roberts' nomination to the Supreme Court, and I look forward to being an active participant in that process.